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No. 71-1549

FILED
JUN 15 1972
MICHAEL RODAK, JR., CLERK

In the

Supreme Court of the United States

OCTOBER TERM 1971

FREDERIKA BLANKNER,
Petitioner-Appellant,

vs.

CITY OF CHICAGO, a Municipal Corporation,
Respondent-Appellee.

Appeal From The Supreme Court of Illinois
Docket 41867

REPLY TO BRIEF FOR RESPONDENT CITY OF CHICAGO IN OPPOSITION

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INTRODUCTION

As stated previously in our Petition for Writ of Certiorari and reviewed here for the convenience of the Court:

1. Under Illinois law, an area which is slum and blighted can be condemned for urban renewal purposes and sold to private individuals and institutions for redevelopment. Petitioner does not challenge this practice. Petitioner does challenge the procedure by which the area is determined to be slum and blighted on the grounds that the procedure

amounts to a Bill of Attainder and is violative of the Due Process and Equal Protection Clauses of the Fourteenth Amendment.

2. The Illinois procedure is as follows:

(a) The Department of Urban Renewal declares an area to be slum and blighted. No hearing is required or provided whereby landowners can cross-examine witnesses or present evidence, nor is a notice given to property owners. In *City of Chicago* v. *Zwick*, 27 Ill. 2d 128, 1963, the Illinois Supreme Court held that an owner did not have the constitutional right to a hearing before the Urban Renewal Board prior to its designation of an area as slum and blighted, because the Board hearings are legislative in character. The Urban Renewal Board thus acts as plaintiff, judge and beneficiary in this proceeding without hearing the landowners.

(b) The resolution is then approved by the City Council. Once again, the property owners are not given notice, nor do the property owners have a right to a hearing before the City Council.

(c) Property owners in the area are given an opportunity to sell their property to the City; should they refuse to do so, a condemnation suit is brought against each owner individually.

(d) In the suit for condemnation, a property owner of the area can deny that the area is slum and blighted. But, the burden of proof is on him or her to show that it is not slum and blighted. The Illinois courts have held that the landowner is thus given an opportunity to prove that the area is not slum and blighted.

I. The Resolution of the Urban Renewal Board and the Ordinance of the City of Chicago Finding the Area to be Slum and Blighted was a Bill of Attainder.

Appellee City of Chicago claims in its brief that *United States* v. *Brown;* 381 U.S. 437 is not in point. In that case

the Court held unconstitutional a statute which barred members of the Communist party from holding union positions. The Court distinguished between that statute and one which would set forth "a generally applicable rule decreeing that any person who commits certain acts or possesses certain characteristics shall not hold union offices." Such a law would be constitutional.

In the present case, the resolution of the Department of Urban Renewal and the ordinance of the Chicago City Council decreed that a particular area was "slum and blighted". But the resolution and ordinance did not set forth generally applicable rules decreeing that any area which contains certain characteristics shall be slum and blighted and therefore could be cleared and redeveloped.

We reiterate here all that we have claimed regarding the fact that the resolution of the Urban Renewal Board and the ordinance of the City Council constitute a Bill of Attainder, none of which the City has successfully denied.

II. Placing on the Owner the Unreasonable Burden of Proving That an Area is not Slum and Blighted Is a Violation of Due Process.

Respondent City of Chicago further claims that:

> "The burden of proof is upon the condemnor at all times; once however, a prima facie case has been made, the owner has the burden of going forward. The owner need not prove that the area is not slum and blighted, only that the condemnor's case is unsupportable."

The Illinois Supreme Court in its decision in this case showed how illusory this burden of proof is. The Court in its opinion emphasized that the mere introduction into evidence of the resolution of the Department of Urban

Renewal and the ordinance of the City Council approving the resolution completed the City's *prima facie* case. That is certainly not too heavy a burden for the City to bear with its financial resources, lawyers, and city planners. The burden, as the City concedes (p. 4) is then on the landowner to show that "the condemnor's case is unsupportable."

Since the condemnor's case is that the area is slum and blighted, the owner must prove that the area is not slum and blighted in order to show that the condemnor's case is unsupportable.

This proof is clearly impossible for the ordinary landowner. As pointed out in petitioner's initial brief, the area in question consists of 105.6 acres made up of 266 structures with a total of 2592 dwelling units. Petitioner, who is retired on an inadequate pension, was awarded $40,750. Her mortgage on the property was $32,000. Yet, even deprived as she was by the City of the modest financial backlog of her property, nevertheless she was expected to amass evidence that the area was not "slum and blighted." Adding to the difficulty of this onerous task is the definition of slum and blighted, which at best is broad and general.

Section 3(i) of the Urban Renewal Consolidation Act, Chapter 67 1/2 §91.103(i), Illinois Revised Statutes (1968) provides:

> "Slum and Blighted Area means any area of not less in the aggregate than two (2) acres located within the territorial limits of a municipality where buildings or improvements, by reason of dilapidation, obsolescence, overcrowding, faulty arrangement or design, lack of ventilation, light and sanitary facilities, excessive land coverage, deleterious land use or layout

or any combination of these factors are detrimental to public safety, health, morals or welfare."

Be it noted that because of the methods used in Illinois the urban renewal condemnation procedure is always unfair in that it does not give the property owner the even chance required for justice. In this regard this case is particularly important to the Court because the petitioner's set of facts highlights the inequities and defects of the present usages, and shows them in bold relief.

Furthermore, it cannot be overly emphasized that eminent domain for the purpose of "slum clearance" is substantially different from the historical uses of the condemnation purposes of the state. In "slum clearance" the property cleared is frequently resold to private parties. Therefore, the danger of misuse of the power is far greater than would be the case in condemnation for the purposes of schools, post offices, highways etc.

Respondent states that *Speiser* v. *Randall*, 357 U.S. 513 (1958) and *First Unitarian Church* v. *County of Los Angeles*, 357 U.S. 545 (1959) does not apply because there was no criminal liability at issue. However, the urban renewal law is enacted under the state's police powers to protect the public safety, health, morals or welfare of the community. *De facto* if not *de jure*, the landowners in this area are being punished by a land clearance program for owning property in an allegedly slum and blighted area.

III. Berman v. Parker is not in Point.

Respondent City of Chicago claims that *Berman* v. *Parker*, 348 U.S. 26 (1954) supports its position. However in *Berman* v. *Parker* there was no denial that the area was slum and blighted. The only issue which the Court was

called upon to rule was whether an area which is slum and blighted may be condemned and sold for private development. The Court held that it could. Ours is an entirely different issue not heretofore decided by this Court. Petitioner does not challenge this practice. Petitioner does challenge the procedure by which the City of Chicago declares an area to be slum and blighted. It is done by legislative fiat in lieu of judicial determination and without hearing from the actual people whose property is being taken.

IV. Petitioner was not given Notice or Hearing before Subcommittee of Chicago City Council.

The City in its Reply Brief in effect confirms the petitioner's contention that she was not afforded notice or hearing in respect to the meetings when the area where her property lies was arbitrarily declared to be slum and blighted and then designated for re-sale to the University of Chicago.

As specified in her petition (p. 3), the two sessions at which the fate of the area and of her property was decided took place in 1964.

One was the meeting of the Board of the Department of Urban Renewal on October 8, 1964, at which the area was found to be slum and blighted. And the other was the meeting of the Chicago City Council on November 16, 1964 when the Chicago City Council adopted the ordinance approving the resolution for slum clearance and redevelopment. (A copy of the ordinance can be found in Appendix C of petitioner's original brief, pp. 14a-15a).

Petitioner claims that she was deprived of due process of law in that she was not afforded notice or hearing on the occasion of either of these two decisive meetings.

And the City does not deny this. Indeed the one "notice" that the City claims to have given the petitioner, prior to the initiation of the present proceedings, was in 1966 (p. 5). This was for a meeting of the Committee on Planning and Housing of the Chicago City Council two years after the Board of the Department of Urban Renewal and the Chicago City Council had designated the area for slum clearance. This meeting was therefore two years too late to protest the fundamental decisions regarding the taking of the petitioner's property.

In addition, since the City has selected this one meeting for prominent mention, perhaps it should be observed that there is nothing in the record of the trial court or in the record of the Illinois Supreme Court to indicate that such a "hearing" was held or to give it importance. This is the first time the City has mentioned such a "hearing". Petitioner first learned of the "hearing" from respondent's brief (received June 2, 1972). Notice was not sent to petitioner concerning this alleged "hearing".

Respondent states that notice of the "hearing" was published June 24, 1966 and June 28, 1966 in the *Chicago American*. At that time, there were five daily newspapers published in Chicago: *Chicago Sun-Times, Chicago Daily News, Chicago Tribune, Daily Defender,* and the *Chicago American*. The law cannot make it incumbent for the petitioner to read all five newspapers every day in order to prevent her property from being seized by the City. There is no evidence that even one owner attended this "hearing".

It should be observed that the "notice" is false on its face because it leads one to believe that these were the first considerations and decisions regarding the project,

when in fact all plans and proposals for the taking of the property had already been made and completed without any participation on behalf of petitioner or other property owners in the area to be affected. (For text of "notice" see Appendix A)

Furthermore, the "notice", even had it been timely instead of two years too late, was not an adequate notice to the petitioner.

It was totally inadequate instead, in that it was in no way personal. It made no mention of the petitioner's name or the address of her property. As previously observed, no notice was sent to her by mail as required by law for a notice to be adequate.

Petitioner was the owner of record of the property at that time. If the City wished to provide a fair hearing before the Committee on Planning and Housing and to permit all interested parties to present evidence, it could have at least notified the owners of the meeting by mail. This was an urban renewal project costing many millions of dollars. The cost of the stamps would not be an unreasonable burden on the City.

As can be seen from the foregoing facts, now the City has confirmed that the petitioner was deprived of notice and hearing and therefore of due process of law in relation to the fundamental decisions for the taking of her property, just as she has contended.

Notice, hearing and right of immediate appeal of fundamental decisions are all essentials of due process of law and all three are lacking in this case.

V. Petitioner was not given a Hearing at the Trial.

Respondent City of Chicago claims that petitioner was given a hearing at the trial. As noted above, the resolution of the Department of Urban Renewal and the ordinance of the City Council creates a presumption that the area is slum and blighted. Because of the enormity of the task of rebutting this presumption, it is for all practical purposes an irrebuttable presumption.

The burden which is imposed on the property owner is so onerous and unreasonable as to amount to a denial of due process.

When any requirement is unreasonable to a high degree it violates a basic concept of fairness and therefore it violates due process.

VI. The Petitioner Raises Questions of Substance not Raised before.

Finally, respondent claims that petitioner raises no questions of substance, either federal or non-federal, that have not already and repeatedly been decided adversely to the petitioner's position. Yet, the respondent has been unable to cite even one case which has considered the petitioner's position and issues, or which has been decided adversely to petitioner's position.

CONCLUSION

Respondent City of Chicago's brief in fact admits the complete lack of notice and hearing at the time the fundamental and irrevocable decisions for the taking of petitioner's property were made.

The sole notice that the City claims to have given the petitioner was one published in a newspaper two years later, which is referred to in Respondent's brief (p. 5) and printed in this reply (Appendix A). And this single notice is insufficient on its face to give petitioner any actual notice of what was being done in her property.

It was printed in June, 1966, two years after all the basic decisions had been made and after the City's *prima facie* case, sustained by the Illinois Supreme Court for the taking of her property, had been completed in 1964 through the determination by the Department of Urban Renewal on October 8, 1964, that "a certain area adjacent to the campus of the University of Chicago was a slum and blighted area and should be acquired for redevelopment" and after the ordinance of the Chicago City Council adopted November 16, 1964, had "approved the Department's determination." (See Decision of the Illinois Supreme Court, in Petition for Writ of Certiorari, Appendix A, p. 2a and 1a).

This newspaper "notice" was totally inadequate in that it made no mention of the petitioner's name nor the address of her property and was never mailed nor in any way delivered to the petitioner.

In the light of the various confirming facts provided by Respondent in his reply we reaffirm that the petitioner's

property has been taken unconstitutionally in violation of the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment.

Accordingly petitioner respectfully urges this Court to grant its Writ of Certiorari to review the fundamental constitutional questions raised regarding the taking of petitioners property without due process of law, through a Bill of Attainder, under the guise of urban renewal "slum clearance" for the declared mutual multi-million dollar financial benefits of a private corporation and the Department of Urban Renewal. (Petition for Writ of Certiorari, pp. 15-17)

Respectfully submitted,

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APPENDIX A

Text of "Notice" published in
the *Chicago American*,
June 24, 1966 (p. 27) and
June 28, 1966 (p. 17)

LEGAL NOTICE

TO WHOM IT MAY CONCERN:

Notice is hereby given that beginning at 10:30 a.m. o'clock on July 6, 1966, a public hearing will be held by the Committee on Planning and Housing of the City Council of the City of Chicago in Room 201A-City Hall, Chicago, Illinois to inform the community of the proposals of the City of Chicago to undertake a project pursuant to the Urban Renewal Consolidation Act of 1961 with Federal financial assistance under Title I of the Housing Act of 1949, as amended, designated Slum and Blighted Area Redevelopment Project 60th-Cottage Grove; and involving the acquisition of parcels of land in the area legally described below; the demolition or removal of buildings and improvements thereon; the installation, construction or reconstruction of streets, utilities and other site improvements; making the land available for development or redevelopment by private enterprise, or public agencies as authorized by law; install, construct or reconstruct schools, parks, and-or playgrounds; and carrying out of plans in accordance with in urban renewal plan pursuant to the urban Renewal Consolidation Act of 1961.

The legal description of Redevelopment Project 60th-Cottage Grove is as follows:

(legal description)

The program of the Department of Urban Renewal of the City of Chicago with respect to the relocation of families, individuals, and business from the Properties located within such project area.

Any person or organization desiring to be heard will be afforded an opportunity to be heard at said meeting. Dated: June 24 & 28, 1966.

ALDERMAN
ARTHUR V. ZELEZINSKI,
Chairman
City Council Committee on
Planning and Housing
City of Chicago